

In the Supreme Court OCT 7 1976

OF THE

United States

MICHAEL RODAK, JR., CLERK

OCTOBER TERM, 1976

No. 76-364

CHARLES EDWARD WOODRUFF, JAMES GILHOOLEY,
EAST BAY MODEL ENGINEERS SOCIETY, INC.,
Petitioners,

VS.

AIR PROPERTIES G., INC., THE HONG KONG BANK OF CALIFORNIA,
REPUBLIC NATIONAL BANK AND TRUST COMPANY, a National
Banking Institution, LAND DATA RESEARCH COMPANY,
RONALD W. CURRAN, BYRON H. CUNNINGHAM, MARTIN
ACKERMAN, C. N. HISLOP, JR., FIRST AMERICAN TITLE
INSURANCE COMPANY, LAND DATA INVESTMENTS, INC.,
GARY MARTIN, ADAMS PROPERTIES, INC., WELL-
WOOD BEALE, AIR FARMS NW 80, LTD., SAVERS
EQUITY FUNDING CORPORATION, JOEL BERGER,
PRO LAND DATA ASSOCIATES, SANT PALLAN,
WILLIAM L. PEREIRA & ASSOCIATES, RAWIS
ACKER, DON O'BRIEN,
Respondents.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit

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Respondents.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

Respondents Adams Properties, Inc., and Gary A. Martin (hereinafter collectively "Adams"), respectfully submit that the Ninth Circuit Court of Appeal correctly held that the Order of the District Court

determining that the within action should not proceed as a class action was not an appealable order under the facts of this case; and that said Court correctly dismissed that appeal. The decision is not in conflict with decisions of other courts of appeal; rather, the Ninth Circuit applied to this case the tests of appealability enunciated in several prior appellate decisions from several circuits, in many of which *certiorari* has been denied. The decision does not involve an important question of law which has not been decided by this Honorable Court. (*Cf., Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 162 (1973)). Accordingly, these respondents respectfully submit that *certiorari* is neither necessary nor appropriate in this action (Rule 19, Rules of the Supreme Court of the United States).

This action was originally commenced as a proposed class action by Richard Hudson Share¹; Petitioners Charles Edward Woodruff, James Gilhooey and East Bay Model Engineers Society, Inc. joined the action as plaintiffs on or about October 20, 1971. The proposed class constituted approximately three hundred (300) persons. The purchase price of their respective transactions ranged from \$2,500 to \$50,552.50.

¹Mr. Share was originally the sole plaintiff in this action. He is an attorney and has acted as an associate counsel for the plaintiffs since the inception of the action. On June 16, 1976, he moved the trial court to be permitted to withdraw as a representative plaintiff on the ground that he had "lost interest" in the action. That motion was granted, and he is no longer a party to the controversy. That "loss of interest" did not result from any settlement with or any effort by any defendant in the action. The remaining named plaintiffs did not join in the motion and are continuing with the action.

On May 18, 1972, the trial court granted conditional class status to the action; that order was made prior to any discovery being taken by the defendants. Adams were joined in the action by the second amended complaint filed *subsequent* to the Order granting conditional class certification. The second amended complaint purported to state seventeen counts for relief against various and often different defendants.

The defendants commenced their discovery subsequent to the filing of the Second Amended Complaint. On August 20, 1974, upon motions of several defendants including Adams, which said motions were predicated upon substantial deposition testimony, including that of all the named plaintiffs, the trial court found that common issues of law and fact did *not* predominate in the action, as required by Rule 23, F.R.C.P., but that the issues of fact and law required to be proved by each potential claimant in order to establish the merits of his respective claim were so disparate that individual proof would be required by *each* claimant. The trial court therefore determined that this action could not be maintained as a class action and withdrew class certification.

Plaintiffs filed a Notice of Appeal from that order. They also filed a motion in the district court to join one hundred and seventy-two (172) other claimants as plaintiffs in the action. That motion has been stayed pending determination of plaintiffs' appeal from the subject order.

On July 6, 1976, the Ninth Circuit filed its opinion dismissing the plaintiffs' appeal.

Other claimants, also represented by plaintiffs' counsel herein, have simultaneously been prosecuting a similar action against many of the same defendants (including these respondents), as well as some additional defendants, in the Superior Court of the State of California for the County of San Luis Obispo, being action number 40651 in that court. That action was also filed as a proposed class action; it was admitted and then stipulated that both proposed classes would be comprised of the same persons with regard to the same transactions. On February 13, 1976, the San Luis Obispo Superior Court entered its order denying class action certification to that action; an appeal has been filed from that order to the Court of Appeal of the State of California and is now pending in that court.²

I

THE NINTH CIRCUIT CORRECTLY DETERMINED THAT THE ORDER IN THE WITHIN ACTION WAS NOT APPEALABLE UNDER THE "DEATH KNELL" RULE

The Ninth Circuit, in its decision herein, applied the so-called "death knell" exception to the general rule that appeals will lie only from final judgments entered in the trial court (28 U.S.C. §1291). (See, e.g., *Eisen v. Carlisle & Jacquelin*, 370 F.2d 119 (2d Cir. 1966), *cert. denied*, 386 U.S. 1035 (1967); *Wein-*

²Respondents submit that this Court may take judicial notice of the pleadings filed in that action (Rule 201, Federal Rules of Evidence).

It should be noted that those plaintiffs are also actively pursuing their rights.

gartner v. Union Oil Company of California, 431 F.2d 26 (9th Cir. 1970).) The "death knell" concept has been discussed and applied by various circuit courts; it provides an appeal from denial of class action status in those particular cases where the "death knell" of the action is truly sounded by denial of class action status.

"The death knell doctrine . . . is concerned with survival of the basic cause of action . . . and is grounded on the notion that a sentence of death should not be passed on a cause of action by only one judge." (*Share v. Air Properties G, Inc.*, _____ F.2d _____ (9th Cir. 1976); slip opinion p. 4; appendix A to petition for writ.)

The crux of the Ninth Circuit decision here is that the death knell has *not* been sounded in this action and that the order is therefore not appealable. That determination is entirely appropriate upon the facts of this case. Petitioners have made an impassioned, *but totally unsubstantiated*, plea that the action cannot proceed unless it proceeds as a class action. They contend that the Ninth Circuit should have made that factual determination. Notably, however, petitioners failed entirely to present *any* evidence (including the matters they now seek to bring before this Honorable Court by conclusionary statement) in the trial court that would support a contention that the action could not proceed on behalf of individual plaintiffs. The plaintiffs have the burden of establishing, in the trial court, that the action cannot proceed as a result of denial of class action certification. (*Gosa v. Securities Investment Co.*, 449 F.2d 1330 (5th Cir. 1971).)

The burden must logically be placed upon the plaintiffs; it is they who must establish the potential value of the respective claims of the proposed class members as well as the other factors which affect the potential viability of the action. (See, *e.g.*, *Graci v. United States*, 472 F.2d 124 (5th Cir. 1973), *cert. denied*, 412 U.S. 928 (1973).) The appellate court is *not* the forum in which to make this showing. It is the *trial court* which is empowered to weigh facts and make these determinations; it is in the trial court that evidence can be introduced. If the appellate courts are to try the facts of continued viability in every appeal from denial of class action certification, then not only the final judgment rule, but the division of functions between the appellate and trial courts, will be rendered meaningless.

Petitioners introduced *no evidence* before the trial court to establish any claim that the "death of the action" would necessarily result from decertification of the class, and there is no basis in the record for the argument which they present to this Court, particularly in light of the *prima facie* evidence to the contrary. It is thus wholly improper for Petitioners to argue that the court failed to determine whether there was "any cognizable probability that there will be subsequent litigation" (Pet., p. 7).

The Ninth Circuit decision here specifically concurred with the decisions of the Fifth Circuit that "the individual claims, the extent of plaintiffs' resources, and the probable expense of prosecuting the lawsuit are all factors relevant to the issue of via-

bility. (*Graci v. United States*, 472 F.2d 124 (5th Cir. 1973), *cert. denied*, 412 U.S. 928 (1973))." (Slip opinion, pp. 5-6; appendix AA to petition.) Analysis of each of these factors in this case precludes a finding that the death knell must necessarily have been sounded. Petitioners argue that the "average claim" would be \$4,600 (Pet., p. 3). The Ninth Circuit expressly refused to decide in this case whether averaging claims was appropriate in any circumstances. However, that approach is certainly improper and misleading here. At the beginning of the Land Data project purchases were made at \$2,500 an acre, so that many persons purchased in that price range. By the end of the project, prices were \$13,500 an acre, and *many* persons thus committed for substantial purchase prices. (See C.R. pp. 402-411, appended as Exhibit A hereto for convenience, for a partial list of potential claimants and the amount of their respective purchase prices.) Thus, it should be noted that a substantial number of persons entered into contracts for purchases in excess of \$10,000, sixteen potential claims exceed \$20,000 and *ten exceed \$39,000 per person*. That is not the type of claim that the "death knell" doctrine was intended to protect. (*Cf.*, cases in which appeals have been granted: *Korn v. Franchard Corp.*, 443 F.2d 1301 (2d Cir. 1971) less than \$1,000; *Green v. Wolf Corp.*, 406 F.2d 291 (2d Cir. 1968) \$386.00; *Eisen v. Carlisle & Jacquelin*, 370 F.2d 119 (2d Cir. 1966) \$70.00; to cases where appeals have been dismissed: *Shayne v. Madison Square Garden Corp.*, 491 F.2d 397 (2d Cir. 1974), \$7,482.00; *Gosa v. Securities Investment Co.*, *supra*, \$3,322.20;

Milberg v. Western Pacific Railroad Co., 443 F.2d 1301 (2d Cir. 1971), \$8,500.00.)

This is not a consumer fraud action where the claims are so small that they can only be prosecuted by the class action mechanism. Many purchasers from Land Data have claims of sufficient size to justify individual prosecution. Moreover, one hundred seventy-six (176) claimants have moved to join in this action as individual plaintiffs.³ It cannot be suggested that their collective claims are not sufficient to encourage their counsel to continue his contingency fee representation. Certainly they have proceeded with great vigor to date in maintaining two basically duplicatory actions in two different courts.

Adams respectfully submit that the Ninth Circuit correctly enunciated and applied the limited "death knell" exception to the final judgment rule in this action.

II

THE NINTH CIRCUIT CORRECTLY DETERMINED THAT THE SUBJECT ORDER IS NOT APPEALABLE AS A "COLLATERAL ORDER"

The Ninth Circuit, analyzing the within case based on the holding of *Cohen v. Beneficial Loans Corp.*, 337 U.S. 541 (1949), determined that the Order in question was not a collateral order from which an appeal would lie as a matter of right. The Ninth Circuit held that the district court's order was *not* separable from

³A similar motion was made and granted in the San Luis Obispo Superior Court proceeding.

the rights asserted by the plaintiffs in the within action, although the Court clearly recognized, contrary to petitioners' assertion, that a denial of class certification *may* be a collateral—and thus an appealable—order "under proper circumstances." (Slip opinion p. 8; Appendix AA to Petition.) (Cf., *Eisen v. Carlisle & Jacquelin*, *supra*, 417 U.S. at p. 172.)

As the Ninth Circuit held here, the facts involved in determining the propriety of class status in this case are inexorably interwoven with the merits of the claims for relief and are not collateral thereto. There could be no better proof of that fact than the content of the briefs filed on the purported appeal from the order decertifying the class herein, which deal at length with the merits of the claims for relief. Indeed, the merits of the various claims for relief constituted the bulk of petitioners' brief before the Ninth Circuit.

A meaningful appeal on this issue does exist upon final judgment rendered in the trial court. (Cf., *Esplin v. Hirschi*, 402 F.2d 94 (10th Cir. 1968), *cert. denied* 394 U.S. 928 (1969).) Moreover, it cannot seriously be argued that an attorney proceeding upon a contingency fee does not have ample incentive to appeal from denial of a class action certification if the plaintiffs succeed on the merits in the trial court.

III

CONCLUSION

Respondents Adams respectfully submit that Petitioners have failed to establish any basis for issuance of a Writ of Certiorari in the within action. The decision of the Ninth Circuit holding that the Order of class decertification in this case is not appealable is squarely in accord with prior appellate decisions on the law and, further, is correct as applied to the facts of this case. The petition should therefore be denied.

BANCROFT, AVERY & MCALISTER

SANDRA J. SHAPIRO

BERNARD I. SEGAL

Attorneys for Respondents

Adams Properties, Inc. and Gary Martin

Dated, September 29, 1976.

(Appendix Follows)

Appendix

RECAP: Dollar amount and acreage amount represented by each card as follows:

Date Card Received	Investor	Purchase Price	Acreage	Parcel
10/16/71	Friedman, Arthur	\$ 16,000.00	3.20	Q- 1
		14,152.50	1.53	B-14 (1)
"	Neville, Louise	\$ 4,800.00	1.60	A- 2
		5,600.00	1.60	A- 3
		8,000.00	2.00	A- 4 Resale
"	Allum, Ronald	\$ 9,945.00	1.02	B-14 (2)
"	Yurk, Clarence	\$ 12,638.12	.91	Q- 3
"	Julien, Robert	\$ 12,207.50	.95	Q- 2
		7,324.50	.57	Q- 2
"	Peterson, Donald	\$ 2,800.00	.80	A- 3
		3,200.00	.80	A- 4
"	Hueckel, Manfred	\$ 11,793.75	1.27	B-14 (1)
		7,500.00	3.00	A- 1
"	Rosellini, Davey	\$ 12,207.50	.95	Q- 2
10/18/71	Treon, Stuart	\$ 4,800.00	1.60	A- 2
"	Howard, Andrew	\$ 7,000.00	2.00	A- 3
"	Johnson, Jr., D. O.	\$ 12,207.50	.95	Q- 2
"	Schatz, Melvin	\$ 9,766.00	.76	Q- 2
		12,000.00	2.40	Q- 1 (1)
"	Galen, John	\$ 12,207.50	.95	Q- 2
"	McCarthy, John	\$ 16,800.00	2.80	Q- 1 (2)
"	Crall, Robert	\$ 12,207.50	.95	Q- 2
"	Hirth, Glenn	\$ 7,200.00	1.20	Q- 1 (2)
"	Becker, John	\$ 12,207.50	.95	Q- 2
"	Durango Investment Corp.	\$ 11,793.75	1.27	B-14 (1)
"	Koundakjian, T.	\$ 12,000.00	2.00	Q- 1 (2)
		24,000.00	4.00	Q- 1 (2)
		26,856.50	2.09	Q- 2
"	Friedman-Jacobs Co.	\$ 16,000.00	3.20	Q- 1 (1)
	Arthur Friedman	14,152.50	1.53	B-14 (1)
	& Morris Friedman			
"	McCormick, William	\$ 8,400.00	2.40	A- 3
"	Royal, William	\$ 12,207.50	.95	Q- 2

RECAP: Dollar amount and acreage amount represented by each card as follows:

Date Card Received	Investor	Purchase Price	Acreage	Parcel
10/18/71	Nasseem, M.	\$ 12,000.00	2.00	Q- 1 (2)
		12,431.25	1.27	B-14 (2)
"	Chavez, R.	\$ 6,000.00	1.20	Q- 1 (1)
"	Isaef, N. P.	\$ 12,207.50	.95	Q- 2
"	Glathe, J. P.	\$ 12,638.12	.91	Q- 3
"	De Somer, Abraham	\$ 9,945.00	1.02	B-14 (2)
		12,207.50	.95	Q- 2
		11,700.00	1.20	A- 2 Resale
"	De Somer, Myles	\$ 12,000.00	2.00	Q- 1 (2)
		11,793.75	1.27	B-14 (1)
		11,793.75	1.27	B-14 (1)
		12,207.50	.95	Q- 2
"	De Somer, Inez	\$ 12,000.00	2.00	Q- 1 (2)
"	Ness, M. J.	\$ 17,090.50	1.33	Q- 2
"	Marshall, Ralph	\$ 20,000.00	4.00	Q- 1 (1)
		6,000.00	1.20	Q- 1 (1)
		12,207.50	.95	Q- 2
"	Travel Advisors of Sunnyvale	\$ 12,638.12	.91	Q- 3
"	Snyder, R.	\$ 12,000.00	4.00	A- 2
"	Diashyn, M.	\$ 11,793.75	1.27	B-14 (1)
"	Heinrichs, Abe	\$ 12,207.50	.95	Q- 2
"	Hahn, Maurice	\$ 8,000.00	2.00	A- 4
"	Fife, T.	\$ 12,000.00	4.00	A- 2
"	Golder, F. B.	\$ 7,000.00	2.00	A- 3
		12,638.12	.91	Q- 3
"	Sherrington, A.	\$ 5,000.00	2.00	A- 1
"	Buckley, R. E.	\$ 12,638.12	.91	Q- 3
10/19/71	Baum, Dennis	\$ 11,793.75	1.27	B-14 (1)
"	Zink, John	\$ 14,649.00	1.14	Q- 2
"	Elloway, John	\$ 12,638.12	.91	Q- 3
"	Bodin, Arthur	\$ 13,000.00	1.00	A- 1 Resale
"	Keim, Dewey	\$ 12,207.50	.95	Q- 2
"	Fisher, Wm.	\$ 24,415.00	1.90	Q- 2
"	Roy, Robert	\$ 12,638.12	.91	Q- 3

RECAP: Dollar amount and acreage amount represented by each card as follows:

Date Card Received	Investor	Purchase Price	Acreage	Parcel
10/19/71	Freynik, Elizabeth	\$ 5,600.00	1.60	A- 3
"	Kanemoto, Ron	\$ 11,793.75	1.27	B-14 (1)
"	Elgin, Roger	\$ 12,638.12	.91	Q- 3
"	Eggers, David	\$ 24,415.00	1.90	Q- 2
"	Carli, Arthur	\$ 24,000.00	4.00	Q- 1 (2)
"	Coulson, H. G.	\$ 12,000.00	2.00	Q- 1 (2)
		12,638.12	.91	Q- 3
"	Sarto, Joseph	\$ 14,649.00	1.14	Q- 2
"	Coon, Paul	\$ 12,207.50	.95	Q- 2
"	Smith, David	\$ 8,400.00	2.40	A- 3
"	Kuns, Warren	\$ 18,870.00	2.04	B-14 (1)
		7,500.00	3.00	A- 1
"	Ediger, John	\$ 12,207.50	.95	Q- 2
"	Johnson, Keith	\$ 20,000.00	4.00	Q- 1 (1)
		20,000.00	4.00	Q- 1 (1)
		11,100.00	3.00	A- 3 Resale
"	Staffeld, B.	\$ 16,800.00	2.80	Q- 1 (2)
"	Petricone, A.	\$ 12,638.12	.91	Q- 3
"	Herndon, C.	\$ 12,600.00	3.60	A- 3
		7,200.00	3.60	Q- 1 (1)
"	Bush/Barnes	\$ 67,128.75	6.88	B-14 (2)
"	De Somer, Russell	\$ 19,532.00	1.52	Q- 2
"	Bertron, Robert	\$ 14,152.50	1.53	B-14 (1)
"	Candiliere, J.	\$ 8,000.00	2.00	A- 4
"	Tiret, Horace & Elsie	\$ 12,207.50	.95	Q- 2
		14,917.50	1.53	B-14 (2)
"	Starnes, Les	\$ 9,945.00	1.02	B-14 (2)
"	Muhlhauser, H. J.	\$ 12,500.00	5.00	A- 1
		12,000.00	2.40	Q- 1 (1)
"	Gilson, Edwin	\$ 12,207.50	.95	Q- 2
"	Briggs, Claude	\$ 9,766.00	.76	Q- 2
"	Bruce, Michael	\$ 12,431.25	1.27	B-14 (2)
"	Heersema, P. H.	\$ 5,055.25	.37	Q- 3
		12,638.12	.91	Q- 3

RECAP: Dollar amount and acreage amount represented by each card as follows:

Date Card Received	Investor	Purchase Price	Acreage	Parcel
10/19/71	Koch, Monica	\$ 6,400.00	1.60	A- 4
"	Svilich, G. A.	\$ 21,600.00	3.60	Q- 1 (2)
10/20/71	Harris, Joyce	\$ 4,800.00	1.60	A- 2
"	Kraemer, Robert	\$ 4,800.00	1.20	A- 4
"	Halter, Frank	\$ 11,793.75	1.27	B-14 (1)
"		12,638.12	.91	Q- 3
"	Working, John	\$ 12,638.12	.91	Q- 3
"	Addicott, Warren	\$ 12,638.12	.91	Q- 3
"	Sanner, Marilyn	\$ 38,400.00	6.40	Q- 1 (2)
"		37,740.00	4.08	B-14 (1)
"	Sequeira, M.	\$ 12,431.25	1.27	B-14 (2)
"	Knutsson, K. H.	\$ 12,638.12	.91	Q- 3
"	Maerkl, Florence	\$ 12,207.50	.95	Q- 2
"	Joerger, Norman	\$ 12,207.50	.95	Q- 2
"	Wilson, Wilbert	\$ 11,793.75	1.27	B-14 (1)
"	Anderson, Charles	\$ 14,649.00	1.14	Q- 2
"		12,638.12	.91	Q- 3
"		12,638.12	.91	Q- 3
"	Crook Family	\$ 12,638.12	.91	Q- 3
"	Cusick, Paul	\$ 10,000.00	4.00	A- 1
"	Hawley, Glenn	\$ 12,431.25	1.27	B-14 (2)
"		11,793.75	1.27	B-14 (1)
"	Kilduff, Edward	\$ 24,000.00	6.00	A- 4
"		4,800.00	1.20	A- 4 Resale
"		12,000.00	2.40	Q- 1 (1)
"	Perry, Bess	\$ 12,638.12	.91	Q- 3
"	Sera, Hiram	\$ 12,638.12	.91	Q- 3
"	Sullivan, John	\$ 12,000.00	4.00	A- 2
"	Gahafer, Thomas	\$ 14,649.00	1.14	Q- 2
"	Hickox, Gundi	\$ 12,500.00	5.00	A- 1
"	Ladd, Dean	\$ 11,793.75	1.27	B-14 (1)
"	Davis, Russell	\$ 12,600.00	3.60	A- 3
"	Ross, Arthur	\$ 12,638.12	.91	Q- 3
"	Kalinin, Lucille	\$ 12,600.00	3.60	A- 3
"	Lundquist, B. J.	\$ 12,207.50	.95	Q- 2

RECAP: Dollar amount and acreage amount represented by each card as follows:

Date Card Received	Investor	Purchase Price	Acreage	Parcel
10/21/71	Johnson, Terry	\$ 12,638.12	.91	Q- 3
"	Bigden/Caulkettan	\$ 14,649.00	1.14	Q- 2
"	Latshaw, Donald	\$ 4,800.00	1.60	A- 2
"	Pospiech, F.	\$ 7,076.25	.77	B-14 (1)
"	Gyuling, Eugene	\$ 4,800.00	1.20	A- 4
"	Woodbridge, J.	\$ 12,800.00	3.20	A- 4
"	Kintzinger, Rosemary	\$ 7,000.00	2.00	A- 3
"	Katekaku, J.	\$ 12,638.12	.91	Q- 3
"	Schwarzbach, M. H.	\$ 14,649.00	1.14	Q- 2
"	Kallman, Gary	\$ 7,200.00	1.20	Q- 1 (2)
"	Born, Fred	\$ 10,000.00	4.00	A- 1
"		12,000.00	2.00	Q- 1 (2)
"		15,165.75	1.10	Q- 3
"		4,000.00	.80	Q- 1 (1)
"	Michel, John	\$ 15,165.75	1.10	Q- 3
10/22/71	Selji & Bond	\$ 29,835.00	3.06	B-14 (2)
"	Worden, Archie	\$ 12,000.00	2.00	Q- 1 (2)
"	Soenen, Kenneth	\$ 12,000.00	2.40	Q- 1 (1)
"	Beedle, Wm.	\$ 12,207.50	.95	Q- 2
"	Haman, L. A.	\$ 12,000.00	2.40	Q- 1 (1)
"	Lee, Donald	\$ 18,870.00	2.04	B-14 (1)
"	Gibson, Jerry	\$ 8,000.00	1.60	Q- 1 (1)
"	Eastman, L.	\$ 12,638.12	.91	Q- 3
"	Corrinet, John	\$ 2,400.00	.80	A- 2
"		14,000.00	2.80	Q- 1 (1)
"		23,587.50	2.55	B-14 (1)
"		8,000.00	1.60	Q- 1 Resale
10/23/71	Ullman, A.	\$ 9,945.00	1.02	B-14 (2)
"	Harward, P. C.	\$ 7,000.00	2.00	A- 3
"	Williams, J. G.	\$ 7,000.00	2.00	A- 3
"	Wilkey, P.	\$ 4,883.00	.38	Q- 2
"	Flocks, Milton	\$ 12,638.12	.91	Q- 3
"	White, Richard	\$ 7,200.00	1.20	Q- 1 (2)

RECAP: Dollar amount and acreage amount represented by each card as follows:

Date Card Received	Investor	Purchase Price	Acreage	Parcel
10/23/71	Hokkala, Vance	\$ 2,400.00	.80	A- 2
"	Sharpe, Vernon	\$ 12,207.50	.95	Q- 2
		12,207.50	.95	Q- 2
"	Frankel, C. W.	\$ 12,207.50	.95	Q- 2
		12,638.12	.91	Q- 3
"	Schroeder, R. A.	\$ 16,511.25	1.78	B-14 (1)
	Note: L. M. Taylor, Adm. of Schroeder Estate. Schroeder deceased			
"	Hawley, Fred	\$ 12,431.25	1.27	B-14 (2)
"	Dunham, O. C.	\$ 4,800.00	1.60	A- 2
Note: No mail delivered 10/25/71 Veteran's Day				
10/26/71	Francik, M. E.	\$ 12,207.50	.95	Q- 2
"	Watanabe, Y.	\$ 12,638.12	.91	Q- 3
"	Eng, Howard	\$ 12,000.00	2.40	Q- 1 (1)
"	Murphy, Wm.	\$ 7,200.00	2.40	A- 2
"	Alden, John C.	\$ 11,793.75	1.27	B-14 (1)
"	Wright, M.	\$ 12,638.12	.91	Q- 3
"	Lee, Thomas	\$ 12,207.50	.95	Q- 2
"	Haberl, Robert	\$ 12,638.12	.91	Q- 3
"	Brandt, Arthur	\$ 7,500.00	3.00	A- 1
		9,435.00	1.02	B-14 (1)
"	Abler, L. A.	\$ 9,766.00	.76	Q- 2
		16,800.00	2.80	Q- 1 (2)
"	Hawley, Gary	\$ 9,766.00	.76	Q- 2
"	Maule, Elroy	\$ 12,638.12	.91	Q- 3
"	Sather, Paul	\$ 12,638.12	.91	Q- 3
"	Noaker, L. J.	\$ 50,552.50	3.65	Q- 3
"	Dunlop, M. G.	\$ 44,752.50	4.59	B-14 (2)
"	Jones, David	\$ 12,638.12	.91	Q- 3

RECAP: Dollar amount and acreage amount represented by each card as follows:

Date Card Received	Investor	Purchase Price	Acreage	Parcel
10/26/71	Coming, B. K.	\$ 12,276.25	1.83	Q- 3
"	Gonsalves, F. J.	\$ 26,000.00	2.00	A- 4 Resale
"	Schaeffe, W.	\$ 8,000.00	1.60	Q- 1 (1)
"	Ives, Travis	\$ 9,435.00	1.02	B-14 (1)
"	Holt, Gary	\$ 12,000.00	2.40	Q- 1 (1)
		11,793.75	1.27	B-14 (1)
10/27/71	Chandler, Bill	\$ 12,638.12	.91	Q- 3
"	Burnett, M. G.	\$ 12,207.50	.95	Q- 2
"	White, John D.	\$ 12,207.50	.95	Q- 2
"	Fiscus, D.	\$ 12,638.12	.91	Q- 3
"	Gerlich, H. W.	\$ 12,638.12	.91	Q- 3
"	Wise, Majorie	\$ 12,207.50	.95	Q- 2
"	Shaffer, Glenn	\$ 12,207.50	.95	Q- 2
"	Millard, John	\$ 7,500.00	3.00	A- 1
		2,500.00	1.00	A- 1
"	Jansen, John	\$ 4,800.00	1.20	A- 4
"	Crowell, Eldy	\$ 12,000.00	2.00	Q- 1 (2)
"	Angell, Robert	\$ 16,000.00	3.20	Q- 1 (1)
"	Townsend, Lois	\$ 12,000.00	2.00	Q- 1 (2)
"	Bace/Wightman	\$ 12,638.12	.91	Q- 3
"	Tyson, C.	\$ 11,793.75	1.27	B-14 (1)
10/28/71	Cherry/Boggs	\$ 12,638.12	.91	Q- 3
"	Lokker, Eldred	\$ 3,200.00	.80	A- 4
		6,000.00	1.20	Q- 1 (1)
"	Russell, Jon	\$ 12,207.50	.95	Q- 2
"	Sunset Ltd.	\$ 14,649.00	1.14	Q- 2
"	Rijnholt, W.	\$ 7,200.00	1.20	A- 4
"	Pierce, W.	\$ 12,638.12	.91	Q- 3
"	Ellis, Ethel	\$ 12,000.00	2.00	Q- 1 (2)
		14,000.00	4.00	A- 3
"	Strain, S. K.	\$ 12,207.50	.95	Q- 2
"	Brotherton, John	\$ 4,717.50	.51	B-14 (1)
"	Fibel, Adolph	\$ 4,000.00	.80	Q- 1 (1)

RECAP: Dollar amount and acreage amount represented by each card as follows:

Date Card Received	Investor	Purchase Price	Acreage	Parcel
10/29/71	Skeggs, George	\$ 7,200.00	1.20	Q- 1 (2)
"	Martin, Ralph	\$ 14,917.50	1.53	B-14 (2)
"	Wilson, Marilyn	\$ 11,793.75	1.27	B-14 (1)
"	Teasdale, Joan	\$ 4,800.00	1.60	A- 2
"	Herrero, J.	\$ 12,638.12	.91	Q- 3
		7,582.88	.55	Q- 3
10/30/71	Derr, Charles	\$ 12,000.00	2.00	Q- 1 (2)
"	Kitchel, J. D.	\$ 22,748.63	1.64	Q- 3
"	Lui, Lambert	\$ 16,000.00	3.20	Q- 1 (1)
"	Genezi, Victor	\$ 12,638.12	.91	Q- 3
"	Anderson, M.	\$ 9,766.00	.76	Q- 2
11/ 1/71	Hanson, Chester	\$ 12,638.12	.91	Q- 3
"	Nix, James	\$ 14,152.50	1.53	B-14 (1)
"	Robertson, John	\$ 5,600.00	1.60	A- 3
"	Jones, David M.	\$ 12,638.12	.91	Q- 3
"	Jones/Weaver	\$ 12,638.12	.91	Q- 3
11/ 2/71	Tiret, Jeff & Gloria	\$ 12,207.50	.95	Q- 2
"	Tiret, Steven			
(11/3/71)	Tiret, Daniel			
	Parker, Marlin			
	Parker, Sharon			
11/ 2/71	Kihnley, N. W.	\$ 9,766.00	.76	Q- 2
"	Barnes, Frank	\$ 19,500.00	2.00	A- 1 Resale
"	Haneberg, Walter	\$ 14,917.50	1.53	B-14 (2)
"	Mahon, Arthur	\$ 11,793.75	1.27	B-14 (1)
11/ 3/71	Randall, John A.	\$ 13,000.00	1.00	A- 3 Resale
		13,000.00	1.00	A- 2 Resale
"	Goff, Joseph	\$ 7,200.00	2.40	A- 2
"	Edwards, Elizabeth	\$ 39,780.00	4.08	B-14 (2)
"	Schassberger, A. F.	\$ 9,766.00	.76	Q- 2
11/ 4/71	Coleman, William	\$ 4,000.00	.80	Q- 1 (1)
"	Thomas, James R.	\$ 12,000.00	2.00	Q- 1 (2)
"	Young, James W.	\$ 12,638.12	.91	Q- 3
	Sub Total	\$3,227,030.79	426.30	

RECAP: Dollar amount and acreage amount represented by each card as follows:

Date Card Received	Investor	Purchase Price	Acreage	Parcel
		Sub total from pg. viii	Sub total from pg. viii	
		\$3,227,030.79	426.30	
11/ 5/71	Whitney, Tim	\$ 12,638.12	.91	
	Sub Total	\$3,239,668.91	427.21	

Breakdown as of Friday, November 5, 1971

302 cards originally sent out	The above sub totals represent:
207 cards returned	257 sales
95 cards have not been returned	212 cards sent out
	-207 clients
	5 card difference

The 5 card difference is: Bace/Wightman — represents one client but two cards were sent
Cherry/Boggs — represents one client but two cards sent

Tiret, Jeff & Gloria — represents one client
Tiret, Steven but 4 cards sent
Tiret, Daniel
Parker, Marlin & Sharon

cards sent above:	8
clients rep. above	3
	<u>5</u>

RECAP: Dollar amount and acreage amount represented by each card as follows:

<u>Date Card Received</u>	<u>Investor</u>	<u>Purchase Price</u>	<u>Acreage</u>	<u>Parcel</u>
		S.T. \$3,239,668.91	S.T. 427.21	
11/ 8/71	Trapalis, Arthur	\$ 12,000.00	4.00	A- 2
"	Ghilotti, Christine	\$ 14,917.50	1.53	B-14 (2)
"	Moreno, John	\$ 12,638.12	.91	Q- 3
11/ 9/71	Carpenter, E. T.	\$ 12,207.50	.95	Q- 2
11/10/71	No cards received			
11/11/71	Hennings, John	\$ 12,800.00	2.00	A- 4
"	Hartman, S. M.	\$ 14,400.00	2.40	Q- 1 (2)
11/12/71	Gravelle, Rosemary	\$ 14,649.00	1.14	Q- 2
"	Adkins, William	\$ 4,800.00	1.20	A- 4
	Sub Totals	<u>\$3,338,081.03</u>	<u>441.34</u>	
11/15/71	Kreitas, Donald	\$ 12,207.50	.95	Q- 2
11/16/71	Kellogg, Harvey	\$ 12,000.00	2.00	Q- 1 (2)
11/18/71	Seybert/Keyzers	\$ 12,638.12	.91	Q- 3
11/29/71	Wilhelmsson, K. E.	\$ 9,945.00	1.02	B-14 (2)
		\$ 11,793.75	1.27	B-14 (1)
12/ 3/71	Gillard, Fred	\$ 9,766.00	.76	Q- 2
	Sub Totals	<u>\$3,406,431.40</u>	<u>448.25</u>	